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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,023	01/15/2002	David D. Chase	39697/25488	5503

29493 7590 12/16/2004
HUSCH & EPPENBERGER, LLC
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EXAMINER

FOREMAN, JONATHAN M

ART UNIT	PAPER NUMBER
3736	

DATE MAILED: 12/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/050,023

Applicant(s)

CHASE ET AL.

Examiner

Jonathan ML Foreman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 and 15-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-14 and 40-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/15/02.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Invention II in the reply filed on 10/21/04 is acknowledged. Claims 1 - 8 and 15 - 39 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Invention, there being no allowable generic or linking claim.

Information Disclosure Statement

The information disclosure statement filed 4/15/02 complies with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609. It has been placed in the application file, and the information referred to therein has been considered by the examiner as to the merits.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 40, 41, 48, 49 and 53 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,769,803 to Brossard.

In regards to claims 40, 41, 48, 49 and 53, Brossard discloses a joint brace (Figure 13b) for encircling at least a part of a body; at least one side panel (70) disposed at a predetermined position along the support body; a plurality of protrusions (42) at the side panel to apply selectively increased pressure to the human body at a position determined by the location of the side panel; the location of the side panel is a result of body shape and body size; the support body and side panel are composed of elastic material (Col. 8, lines 48 – 50); the side panel provides a foundation for the

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protrusions having a firmness higher than the average firmness of the support body (Col. 8, lines 51 – 56).

4. Claims 40, 41, 48 and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,261,871 to Greenfield.

In regards to claims 40, 41, 48 and 49, Greenfield discloses a joint brace (Figures 8 – 12) for encircling at least a part of a body; at least one side panel (50) disposed at a predetermined position along the support body; a plurality of protrusions (41, 60) at the side panel to apply selectively increased pressure to the human body at a positioned determined by the location of the side panel; the location of the side panel is a result of body shape and body size; the support body and side panel are composed of elastic material (Col. 5, lines 10 – 11).

5. Claims 9, 10, 40 – 43 and 51 – 53 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,984,886 to Miller.

In regards to claims 9, 10, 40 – 43 and 51 - 53, Miller discloses a support belt having a front, a back and side panels sized to fit about the lower trunk of a user (Col. 5, lines 42 – 49), first and second sets of protrusions disposed at the side panels on the anterior surface of the belt body to press against the sides of the lower trunk of the user (Col. 6, lines 5 – 10; 15 - 22). No protrusions are disposed on the back of the human body. The positioning a side panel will be a result of the body shape and size of the user (Col. 6, lines 11 – 14). The belt includes a placement structure comprising back adjustment mechanism (Col. 5, lines 50 – 61) capable of facilitating the placement of the support body at least one inch below the navel of a user.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 11, 13, 44 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,984,886 to Miller.

In regards to claims 11, 13, 44 and 46, Miller discloses protrusions (31) in a set and discloses multiple sizes of belts (Col. 6, lines 11 – 14), but fails to disclose the protrusions having a height from approximately one-eighth inch to one inch and being between approximately four millimeters and seventy millimeters measured center to center, from each other. However, a change in the size of a prior art device is a design consideration within the skill of the art. *In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955). Here, modifying the size and spacing of the protrusions as disclosed by Miller to be approximately one-eighth inch to one inch in height and between approximately four millimeters and seventy millimeters measured center to center would have been obvious to one having ordinary skill in the art at the time the invention was made.

8. Claims 12, 14 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,984,886 to Miller as applied to claims 11 and 44 above, and further in view of U.S. Patent No. 5,769,803 to Brossard.

In regards to claim 12, Miller discloses first and second sets of protrusions (31) along the body of the support belt, but fails to disclose additional protrusions applying less pressure to the lower trunk of the user between the first and second sets of protrusions. However, Brossard discloses a set of protrusions (60; Figure 19) applying light pressure (Col. 10, lines 27 – 30) positioned on an area of a support belt lying between the positions of the protrusions as disclosed by Miller. It would have been obvious to one having ordinary skill in the art to modify the support

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belt as disclosed by Miller to include a set of protrusions as taught by Brossard in order to increase the reflex response of the muscle group (Abstract) located in the lumbar region.

In regards to claims 14 and 46 Miller discloses large protrusions (31) in a set, but fails to disclose the large protrusions having a hemispherical shape. However, Brossard discloses small protrusions (32) in a support body having a hemispherical shape. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the large protrusions as disclosed by Miller to be smaller hemispherical protrusions as disclosed by Brossard in order to cover a larger surface to ensure that pressure is specifically applied to the desired area (Col. 5, lines 55 – 59).

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 2,552,475 to Auslind.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan ML Foreman whose telephone number is (571)272-4724. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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JMLF


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